

THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DONNA ZOMERFELD, et al.,

Plaintiffs

v.

LOWES, et al.,

Defendants

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: 3:22-CV-422  
: (JUDGE MARIANI)  
:  
:  
:

FILED  
SCRANTON

AUG 22 2022

PER

DEPUTY CLERK

ORDER

AND NOW, THIS 22<sup>ND</sup> DAY OF AUGUST, 2022, upon review of Magistrate Judge Karoline Mehalchick's Report & Recommendation ("R&R") (Doc. 6) for clear error or manifest injustice, **IT IS HEREBY ORDERED THAT:**


1. The R&R (Doc. 6) is **ADOPTED** for the reasons stated therein.
2. Defendant Lowes' Motion to Dismiss Plaintiffs' Complaint (Doc. 3) is **GRANTED**.

Plaintiffs' action against Defendant Lowes is **DISMISSED**.<sup>1</sup>

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<sup>1</sup> The Court notes that the R&R states that "[o]n June 11, 2022, the Court issued an Order directing that Zomerfelds 'file their brief in opposition to the Defendants' motion to dismiss on or before Wednesday, May 25, 2022.'" (Doc. 6, at 2)(quoting Doc. 5). This appears to be a scrivener's error where Magistrate Judge Mehalchick issued the order directing the Zomerfelds to file their opposition brief, and warned them that failure to do so would result in the motion to dismiss being deemed unopposed, on May 11, 2022, not June 11, 2022 (see Doc. 5). Magistrate Judge Mehalchick thereafter waited almost three months before issuing the present R&R, thereby providing Plaintiffs ample time to file a response, albeit untimely, to Defendants' motion to dismiss.

3. The entirety of Plaintiff's action is **DISMISSED WITH PREJUDICE** pursuant to Fed. R. Civ. P. 41(b) for failure to comply with the Court's Orders and for failure to prosecute this action.<sup>2</sup>
4. The Clerk of Court is directed to **CLOSE** this action.

  
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Robert D. Mariani  
United States District Judge

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<sup>2</sup> Magistrate Judge Mehalchick's reasoning and conclusion that Plaintiffs have failed to prosecute and have abandoned this action is further supported by Plaintiffs' failure to file any Objections to the pending R&R. The Court also agrees with the R&R's findings that an application of the *Poulis* factors further supports the dismissal of this action. See Doc. 6, at 5-11; *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863 (3d Cir. 1984).